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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,357	06/23/2003	Ludmila Cherkasova	200311047-1	7467

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EXAMINER	
COULTER, KENNETH R	
ART UNIT	PAPER NUMBER
2141	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/601,357	CHERKASOVA, LUDMILA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kenneth R. Coulter	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 June 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 

Paper No(s)/Mail Date 9/26/03.
- 4) Interview Summary (PTO-413)
 

Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Specification***

1. The disclosure is objected to because of the following informalities:

All related application data has not been fully disclosed (p. 1, paragraph 1 of the spec.).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 32 – 35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 32 – 35 are directed to software that is not implemented on a computer-readable **storage** medium.

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the

invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 – 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Jackson et al. (U.S. Pat. Pub. No. 2002/0152305) (Systems and Resources for Resource Utilization Analysis in Information Management Environments).

5.1 Regarding claim 1, Jackson discloses a method for managing admission of requests to a shared media server, the method comprising:

allowing each of a plurality of hosting services access to any of a set of shared resources for serving their respective streaming files to clients (Abstract; Figs. 6, 8, 9A-9D; paragraphs 292, 293); and

managing admission of client requests for streaming files to each of the plurality of hosting services to ensure that a desired amount of usage of the shared resources is available to each hosting service (Abstract; Figs. 8, 6; paragraphs 292, 293).

5.2 Per claim 2, Jackson teaches the method of claim 1 further comprising: implementing the plurality of hosting services on a shared media server (paragraphs 195, 197).

5.3 Regarding claim 3, Jackson discloses the method of claim 1 wherein the set of shared resources comprises: shared memory resources and shared disk resources (paragraphs 195, 197).

5.4 Per claim 4, Jackson teaches the method of claim 1 further comprising: determining the desired amount of usage of the shared resources for a hosting service from a service level agreement (Fig. 8; paragraphs 13, 16, 235, 269).

5.5 Regarding claim 5, Jackson discloses the method of claim 1 wherein said set of shared resources comprises memory and wherein said managing admission of client requests for streaming files comprises: receiving a client request for a streaming file to be served from one of said hosting services; and using a segment-based memory model to determine whether at least a portion of the requested streaming file is in the memory (Fig. 3; paragraphs 96, 107).

5.6 Per claim 6, Jackson teaches the method of claim 5 further comprising: determining from the segment-based memory model a cost associated with the one of said hosting services serving the requested streaming file (paragraphs 17, 87, 125, 193).

5.7 Regarding claim 7, Jackson discloses the method of claim 1 wherein said managing admission of client requests for streaming files comprises: receiving a new request for service of a streaming file by one of the plurality of hosting services; performing a resource availability check for the one of a plurality of hosting services to determine whether the requested hosting service has sufficient available resource usage allocated thereto to service the new request (paragraphs 292, 293).

5.8 Per claim 8, Jackson teaches the method of claim 7 wherein said managing admission of client requests for streaming files further comprises: performing a performance isolation guarantee check for the plurality of hosting services to determine whether acceptance of the new request will violate, at any point in the future, availability of a desired amount of usage of the shared resources for any of the plurality of hosting services (paragraphs 132, 133, 292, 293).

5.9 Regarding claim 9, Jackson discloses the method of claim 1 further

comprising: specifying, for each of the plurality of hosting services, a desired amount of usage of the shared resources to be available at any given time for the hosting service (Abstract; Fig. 8; paragraphs 292, 293).

5.10 Per claim 10, Jackson teaches the method of claim 9 wherein said managing admission of client requests comprises: managing admission of client requests for streaming files to each of the plurality of hosting services to ensure that each of the plurality of hosting services has usage of its corresponding specified desired amount of the shared resources (Abstract; Fig. 8; paragraphs 292, 293).

5.11 Regarding claims 11 – 38, the rejection of claims 1 – 10 under 35 USC 102(e) (paragraphs 5.1 – 5.10 above) applies fully.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on M – F, 7 am – 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KENNETH R. COULTER  
PRIMARY EXAMINER  
*Kenneth R. Coulter*

krc